UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS
General Certificate of Education
Advanced Subsidiary Level and Advanced Level

LAW **9084/23**

Paper 2 Data Response **October/November 2012**

1 hour 30 minutes

Additional Materials: Answer Booklet/Paper

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READ THESE INSTRUCTIONS FIRST

If you have been given an Answer Booklet, follow the instructions on the front cover of the Booklet.
Write your Centre number, candidate number and name on all the work you hand in.
Write in dark blue or black pen.
Do not use staples, paper clips, highlighters, glue or correction fluid.

Answer **one** question.

At the end of the examination, fasten all your work securely together.
The number of marks is given in brackets [ ] at the end of each question or part question.

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Answer **either** Question 1 **or** Question 2.

You should make appropriate reference to the source material supplied for each question.

1 Soni aged 23 was involved in the burglary of a dwelling-house in which a number of items of personal property were stolen, all of which were later recovered by the police. He admitted to the police that he acted as the lookout whilst his 14-year-old cousin Jayesh entered the property through an upstairs window.

They both appear at Croydon Crown Court. Soni pleads guilty to one count of burglary. He has two previous convictions for burglary, one in 2009 and one in 2010, and he thinks the court might be more lenient if he admits the offences. He is currently unemployed and lives with his girlfriend in a one-bedroom flat in Croydon. His parents are elderly and unwell and live close by. He does not receive benefit payments from the state but relies on his girlfriend's parents to give them both money towards food and other expenses.

Jayesh is found guilty of the burglary which was committed whilst he was on bail for a previous burglary. He is remitted back to the Youth Court for sentence. He has no other previous convictions but he has recently been excluded from school for threatening a teacher with a knife. He has recently been attending a special school for children with behavioural difficulties.

(a) The pre-sentence report suggests that Soni would be suitable for a Community Punishment Order as he is unemployed and has time to carry out the order. What, if anything, would prevent the court from following this recommendation? [10]

(b) Consider whether Jayesh will be sentenced as a persistent offender. [10]

(c) Discuss the process for an appeal against sentence from the Crown Court. [10]

(d) Compare the approach adopted by a court for sentencing an adult offender with that adopted by the court for sentencing an offender under the age of 18. [20]

Source material

Powers of the Criminal Courts Act 2000

s.100

(1) Where
  (a) a child or young person (that is to say, any person aged under 18) is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over,...

  the sentence that the court is to pass is a detention and training order.

(2) A court shall not make a detention and training order...
  (a) in the case of an offender under the age of 15 at the time of the conviction, unless it is of the opinion that he is a persistent offender*;

(3) A detention and training order is an order that the offender in respect of which it is made shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.

*A 'persistent young offender' is someone who has had previous convictions and has had a finding of guilt in relation to imprisonable offences on at least three previous occasions.

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s.111

(1) This section applies where...
   (a) at the time when that burglary was committed he was 18 or over and had been convicted in England and Wales of two other domestic burglaries; and
   (b) one of those other burglaries was committed after he had been convicted of the other, and both of them were committed after 30th November 1999.

(2) The court shall impose an appropriate custodial sentence for a term of at least three years except where the court is of the opinion that there are particular circumstances which...
   (a) relate to any of the offences or to the offender;
   (b) would make it unjust to do so in all the circumstances.

R v C (a Juvenile) (Persistent offender) [2001]

C who was 15 appealed against a twelve-month detention and training order imposed for burglary arguing that it was wrong to refer to him as a persistent offender. He had committed a burglary and then had been carried in a vehicle which had been taken without consent and had then committed a further act of burglary whilst on bail. Although he had not committed three or more acts of burglary the appeal was dismissed. The court held that the definition of persistent offender depended on the facts of each case. The fact that he had burgled a second time demonstrated sufficient degree of persistence to make C 'a persistent offender'.

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2 Nivedita is renting a room from Jamal on a short-term lease. Nivedita shares a kitchen and bathroom with other tenants. She has been in the property for one month when she starts to experience a number of problems with the property. The washing machine, which Jamal has installed for use by the tenants, regularly floods the kitchen because Nivedita frequently overfills the machine. The boiler cannot be used for hot water or heating. This means that Nivedita has to walk to her friend's house in order to have a shower. This takes over an hour.

Without any heating Nivedita thinks it is too cold to open the window in her room. The walls are now covered with mould.

Nivedita has installed a dishwasher and that has now broken down. Jamal refuses to mend this.

One evening Nivedita's boyfriend Mike comes to visit. They have an argument and Mike smashes an interior glass door with his fist.

Nivedita has asked Jamal to do the repairs but he has told her that all the repairs are her responsibility and that she must do them herself.

(a) Explain the duties a landlord has in relation to the repair of property under a short-term lease. [10]

(b) Advise Jamal whether he has any right to refuse to carry out any of the repairs to the property. [10]

(c) Advise Nivedita in which court she may bring an action against Jamal to force him to make the repairs she has asked him to carry out and describe the procedure for bringing such an action. [10]

(d) Discuss whether Nivedita would be best advised to pursue her complaints through the courts or by some other means. [20]

Source material

Landlord and Tenant Act 1985

s.11

(1) Short-term lease implies a covenant (or legally binding promise) by the landlord:
   (a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes); and
   (b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity, and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity); and
   (c) to keep in repair and proper working order installations for space heating and heating water.

(2) The covenant implied by subsection (1) shall not be construed as requiring the landlord:
   (a) to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part,
   (b) to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident, or
   (c) to keep in repair or maintain anything which the lessee is entitled to remove from the dwelling-house.

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